

"To all this, it was answered that 'an offender against the justice of his country can acquire no rights by defrauding that justice.' That 'between him and the justice he has offended, no rights accrue to the offender by flight. He remains at all times, and everywhere, liable to be called to answer to the law for his violations thereof, provided he comes within the reach of its arm.' Such is the doctrine of the cases of Caldwell and Lawrence (8th and 13th Blatchford's Reports), and of the case of Lagrave (59th New York). And if the cases of Caldwell and Lawrence could be freed from the complications arising out of the residence of the prisoners within the territorial limits of the British crown, and the fact that we received them from the authorities of the British government in virtue of, and pursuant to, treaty stipulations, it would be sound doctrine and indisputable law.

"But did Caldwell or Lawrence come within the reach of the arms of our laws? They were surrendered to us by a foreign sovereign to be tried for specified crimes, and were forcibly brought for the purposes of those trials within the jurisdiction of our courts, and the point in issue was not whether the prisoners had secured immunity by flight, but whether the court could proceed to try them without disregarding the good faith of the government, and violating the 'supreme law?'

"The legal right of a judicial tribunal to exercise jurisdiction in a given case must, from the nature of things, be open to question at some stage of the proceeding, and we find it difficult to conceive of a person charged with crime being so situated as not to be permitted to challenge the power of the court assuming the right to try and punish him.

"The doctrine of the cases of Caldwell and Lawrence has been sanctioned by several prominent British officials and lawyers, and has seemingly been acted upon by some of the Canadian courts, and in one instance (that of Heilbronn) by an English court. We say seemingly, for the reason that in Great Britain treaties are regarded as international compacts, with which in general the courts have no concern. They are to be carried into effect by the Executive, and the proceedings in the courts are subject to executive control to the extent necessary to enable it to prevent a breach of

treaty stipulation in cases of this kind. Hence, when a party charged with crime claims immunity from trial on account of the provisions of the treaty under which he has been extradited, he must apply to the Executive to interfere, through the law officers of the Crown, to stay the action of the court; otherwise it will not, at his instance, stop to inquire as to the form of his arrest, nor as to the means by which he was taken into custody.

"But a different rule prevails with us, because our government is differently organized. Neither the Federal nor State Executive could interfere to prevent or suspend the trial of Hawes. Neither the Commonwealth's Attorney nor the court was to any extent whatever subject to the direction or control either of the President of the United States or the Governor of this Commonwealth.

"But the treaty under which the alleged immunity was asserted being part of the supreme law, the court had the power, and it was its duty, if the claim was well founded, to secure to him its full benefit.

"The question we have under consideration has not been passed on by the Supreme Court of the United States, and it therefore so far remains an open one that we feel free to decide it in accordance with the results of our own investigations and reflections.

"Mr. William Beach Lawrence, in the 14th volume of the *Albany Law Journal*, at page 96, on the authority of numerous European writers, said:

"All the right which a power asking an extradition can possibly derive from the surrender must be what is expressed in the treaty, and all rules of interpretation require the treaty to be strictly construed; and, consequently, when the treaty prescribes the offenses for which extradition can be made, and the particular testimony to be required, the sufficiency of which must be certified to the executive authority of the extraditing country, the State receiving the fugitive has no jurisdiction whatever over him, except for the specified crime to which the testimony applies."

"This is the philosophy of the rule prevailing in France. The French Minister of Justice, in his circular of April 15, 1841, said: 'The extradition declares the offense which leads to